

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BENVINDO M. ROCHA, )  
Petitioner, )  
v. ) Civil Action  
JOSEPH D. MCDONALD, SHERIFF, ) No. 20-11814-PBS  
Respondent. )  
)

**ORDER**

**November 13, 2020**

Saris, D.J.

On October 5, 2020, Benvindo Monteiro Rocha, an immigration detainee held at the Plymouth County Correctional Facility, filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2241 seeking release from custody pursuant to Zadvydas v. Davis, 553 U.S. 678 (2001). See Docket No. 1.

Now before the Court is respondent's motion to dismiss and memorandum of law. See Docket Nos. 10, 11. The respondent argues that (1) the petition is premature because the petition was filed before Rocha's detention reached the six-month mark; (2) the petition fails to allege facts that suggest Rocha's removal is not reasonably foreseeable; (3) the government is attempting to secure a flight to Cape Verde to effectuate Rocha's removal; and (4) the government has a strong interest in

Rocha's continued detention based on risk of flight and community safety. See Docket No. 11.

The deadline for petitioner to file opposition to respondent's motion to dismiss was October 30, 2020. Rocha failed to file opposition by this deadline. However, on November 6, 2020, Rocha filed a letter explaining that he did not receive a copy of respondent's motion for extension of time. See Docket No. 12.

Although Rocha's Zadvydas claim was not ripe when he filed his petition, he has now been in custody over six months. Respondent submitted the declaration of Yolanda Marfissi, a Supervisory Detention and Deportation Officer for the Office of Enforcement and Removal Operations within ICE. See Mem. Of Law (Marfissi Decl.) See Docket No. 11-1. Ms. Marfissi asserts in her declaration that travel restrictions to Cape Verde related to COVID-19 were recently lifted and that ICE is currently in the process of scheduling Rocha for a commercial flight to Cape Verde. Id. at ¶¶ 12 - 14. The earliest such flights for ICE to reserve began on November 5, 2020, and ICE is also in the process of scheduling a charter flight to Cape Verde in mid-November. Id. at ¶ 14. ICE was advised that based upon a review of Rocha's medical record by the Plymouth County House of Correction's Health Service Administrator and the facility

physician, Rocha has no medical issues that render him a greater risk for serious illness from COVID-19. Id. at ¶ 50.

Accordingly, this Court hereby orders that:

1. Respondent shall file a report, on or before November 30, 2020, in which he states the status of efforts to remove Rocha.
2. Rocha shall file any opposition to the pending motion to dismiss by November 30, 2020. The Clerk shall send a copy of this Order with copies of respondent's motion to dismiss (#10) and memorandum of law (#11) to petitioner as follows: Benvindo M. Rocha (#29659), Plymouth County Correctional Facility, 26 Long Pond Road (D53 - cell 304), Plymouth, MA 02360.
3. The petition and motion to dismiss will be held under advisement pending the court's review of the parties' responses to this order.

SO ORDERED.

/s/ Patti B. Saris

Patti B. Saris

United States District Judge